



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Mr C

Applicant²

and

Mr L

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Mr Francis CHAU Yin-ming, MH

Member referred to in section 59J (3) (c): Mr Paul CHEUK Ching-tak

Date of Reasons for Order: 23rd April 2012.

¹ Sections cited in this Order shall, unless otherwise stated, be under Mental Health Ordinance (Cap. 136) Laws of Hong Kong.

² S2 of Mental Health Guardianship Board Rules

³ S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

⁴ S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

Background

1. Mr K was a 53-year-old man suffering from a stroke causing cognitive deficits. The subject has 4 siblings (1 elder brother, 1 younger sister and 2 younger brothers). He used to live with his younger brother after parents passed away. The subject maintained regular contacts with younger sister but not for the elder brother even he lived in the flat opposite to that of the subject. The subject studied up to primary level in Hong Kong and worked as a printing worker afterwards. Before hospitalisation, he was a security guard for over last ten years and earned around \$7,500 per month at the moment. The subject has a sole name account with the balance around \$60,000. Another account of subject with \$40,000 has been withdrawn by his elder sister for settling his hospital fees, medical and other expenses of subject.
2. After the subject's hospitalisation, the younger sister paid visits to him nearly every day. She was in fact the main carer of the subject. She has acted as appointee for the subject's disability allowance as well. During the social enquiry period, the report maker noted that there were arguments between the siblings over the future caring arrangement of the subject. The younger sister eventually gave up the role and the younger brother took up the duties as an alternative. They seldom involved the eldest brother in the discussion process. The eldest brother's attitude towards the issue was rather aloof. He once proposed to arrange the subject to a private old age old but the other siblings seemed to have different views. He refused to discuss further with the report maker and asked the report maker not to contact him anymore.

Circumstances leading to the present application

3. Due to the stroke of subject, he admitted to hospital in January 2011 and transferred to a rehabilitation hospital since 23 February 2011. He could not mobilize his bank account. The siblings would like to use subject's savings for his medical expenses. The youngest brother filed a guardianship application for the subject in September 2011. Regarding the welfare and accommodation plan, the medical social worker had waitlisted the subject for a care and attention home placement with location preference. For the interim arrangement, the siblings had hesitation and could not make up a final decision i.e. either restore the subject home under the care of foreign domestic help or arrange a private old age home placement. After a case conference held between the hospital and the siblings, they still could not provide a feasible accommodation plan for the subject. During the case conference, the younger sister requested for private acupuncture therapy and longer stay in hospital as well as her discontent towards a discharge. The younger brother finally decided to apply for Guardianship Order in order to mobilise subject's money to pay for subject's future medical and living expenses.

Mental and health conditions

4. Mr K has all along enjoyed satisfactory health condition. On the day of onset, he was found unconscious while sleeping and sent to hospital by ambulance. He was diagnosis to be suffering from a stroke causing some cognitive deficits. He showed difficulty in understanding and following complex commands. He was doubly incontinent and incommunicable.

Views of the Director of Social Welfare

5. The maker of social enquiry report stated:

“.....During the social investigation process, he [the applicant] did express his support rendered to MIP and indicated his readiness to shoulder up the responsibilities to handle the welfare matter of his elder brother. However, the present investigation indicated that there had been arguments between him and other siblings over the caring arrangement of MIP. Moreover, the accommodation arrangement for MIP still could not be formulated at the present stage. To assist in the formulation of welfare plan for MIP, the option of arrangement of public guardian was subsequently proposed to him. He finally agreed to the said arrangement and agreed the social worker concerned to render assistance in identifying suitable residential placement for MIP.

While [the younger sister] had expressed hardship and difficulties in paying visits to MIP and [the applicant] was preoccupied by his own busy work, coupling with the fact that exploration of residential placement for MIP may take time, the arrangement of public guardian would be a more feasible option taking into account the various limitations of the family members. In this connection, I would therefore recommend the Director of Social Welfare to be appointed as his guardian.....”

Summary of evidence adduced at hearing on 23 April 2012

6. The applicant, proposed guardian and younger brother of the subject, said he agreed to the amount of debts being the previous expenses paid for the subject as set out in the form of assessment by the report maker. He agreed to appoint the Director of Social Welfare as guardian. He worked in a local tea shop (“茶餐廳”). But now he was out of job. He had once worked with the subject in printing business but that was long time ago. He found the subject as improving in his physical conditions and could make some responses.
7. The younger sister of the subject said she had nothing special to talk about.
8. The maker of social enquiry report, on behalf of the Director of Social Welfare, said she had nothing to add.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

9. The Board had interviewed the subject on 21 April 2012 before the hearing was held. The Board accepted the two medical reports and found the subject as a mentally incapacitated person to a degree warranted to be received into guardianship. The Board also finds that the subject's financial need requires an appointment of a guardian as the remaining savings in his bank account are needed to be mobilized.

Reasoning for choosing the legal guardian

10. As the applicant and subject's younger sister have agreed to the appointment of Director of Social Welfare as guardian, the Board decided to appoint the Director of Social Welfare as subject's legal guardian. The guardian should approach the assessing doctor of the Medical Assessment Form dated 22 March 2012 and informed him that the subject is a mentally incapacitated person.

DECISION

11. The Guardianship Board was satisfied on the evidence and accordingly finds:
- (a) That the subject, as a result of a stroke causing cognitive deficits, was suffering from a mental disorder within the meaning of section 2 of the Ordinance which warranted the subject's reception into guardianship;
 - (b) The mental disorder limited the subject's capacity to make reasonable decisions in respect of a substantial proportion of the matters which related to the subject's personal circumstances;
 - (c) The subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means were available as the subject lacks capacity to make decisions on accommodation, his own welfare plan, treatment plan and finances, which has caused conflict between family members in making decisions

for subject's welfare or accommodation;

In this case, the predominant needs of the subject remained to be satisfied were, namely, decision to be made on future welfare plan, future accommodation and finance;

(d) The Board concluded that it was in the interests of the welfare of the subject that the subject should be received into guardianship.

12. The Guardianship Board applied the criteria in section 59S of the Ordinance and was satisfied that the Director of Social Welfare was the only appropriate person to be appointed as guardian of the subject.

(Mr Charles CHIU Chung-yee)
Chairperson of Guardianship Board